

## **CHAPTER 4      PROPOSED USES OF FEDERAL HEALTH FUNDS**

### **400      GENERAL PROVISIONS**

- 400.1    The provisions of this chapter, including procedures and criteria adopted in accordance with federal legislation and regulations (including regulations of the U.S. Department of Health and Human Services (DHHS) issued August 10, 1979, Federal Register, Vol. 44, No. 156-Part II), shall govern the review and approval or disapproval of proposed uses of federal health funds in the District.
- 400.2    The review procedures and criteria set forth in this chapter shall also cover proposed uses of federal funds subject to Statewide Health Coordinating Council (also referred to in this chapter as the "SHCC") review and approval or disapproval under §1524(c)(6) of Public Law 93-641, as amended, and specified in §401.3.
- 400.3    The purpose of the review shall be to ensure that, to the greatest extent practicable, federal health funds shall be expended in the District in a manner consistent with local planning decisions and supportive of the D.C. State Health Plan developed under the authority of Titles XV and XVI of the Public Health Service Act.
- 400.4    In accordance with the provisions of Mayor's Order No. 76-59, dated February 4, 1976, and consistent with the provisions of §1521 of the Public Health Service Act, the Department of Human Services (also referred to in this chapter as "DHS") shall be the responsible agency for conducting health planning and resources development activities in the District.

### **401      STATEWIDE HEALTH PLANNING AND DEVELOPMENT AGENCY (SHPDA)**

- 401.1    Within DHS, the D.C. State Health Planning and Development Agency (also referred to in this chapter as "SHPDA") shall perform all functions mandated by Public Law 93-641.
- 401.2    The SHPDA shall review and approve or disapprove proposed uses of federal funds under the Public Health Service Act; the Community Mental Health Centers Act; and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 for grants, contracts, loans, or loan guarantees for the development and expansion, or support of health resources by any entity other than the District government; and §§409 and 410 of the Drug Abuse Office and Treatment Act of 1972.

**401 STATEWIDE HEALTH PLANNING AND DEVELOPMENT AGENCY (Continued)**

- 401.3 The SHPDA shall maintain a list of specific programs subject to review and shall update that list from time to time as changes are made in federal programs subject to review.
- 401.4 The SHPDA shall also review and approve or disapprove each proposed use of federal funds made available by the District government from an allotment contract or grant to the city under any of the Acts referred to in §401.2 for grants or contracts for the development, expansion, or support of health resources.
- 401.5 Grants, contracts, loans, or loan guarantees made directly by the Secretary of DHHS, to applicants within the District from allotments to the District covered in §401.3 shall also be subject to SHPDA review.
- 401.6 The SHCC may review annually and recommend to the Secretary of DHHS approval or disapproval of the following:
- (a) Any State plan and any application (and any revision of a state plan or application) submitted to the Secretary of DHHS as a condition to the receipt of any funds under allotments made to the District under the Public Health Service Act, the Community Mental Health Centers Act, §§409 and 410 of the Drug Abuse Office and Treatment Act of 1972; or the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970; and
  - (b) Any application (or any revision of an application) submitted to the Secretary of DHHS by the District for a grant or contract under any provision of the laws referred to §401.6(a) for projects in the District.
- 401.7 The SHPDA shall afford the SHCC a reasonable opportunity to review and comment on the approval or disapproval of proposed uses of those federal funds subject to review by the SHPDA and as specified in this section.
- 401.8 The solicitation of SHCC comments on funds under §401.7 shall be consistent with the provisions of §419 of this chapter; Provided, that the SHCC shall make its recommendations to the SHPDA Director for those uses of federal funds not covered under the SHCC's review and approval authority as specified in §401.6.
- 401.9 If questions arise respecting the reviewability of proposed uses of federal funds identified in §§401.1 through 401.3 and §401.6, either the applicant or the SHPDA may request the federal funding agency to determine whether any particular proposed use of federal funds is subject to review and approval or disapproval by the SHCC or SHPDA.



**401 STATEWIDE HEALTH PLANNING AND DEVELOPMENT AGENCY (Continued)**

- 401.10 In accordance with 42 CFR 122.404(c), if a federal funding agency concludes on its own initiative that a particular proposed use of federal funds in a program covered generally under §§401.1 through 401.3 and §401.6 are not subject to review and approval or disapproval by the SHCC or SHPDA, it shall promptly notify the applicant and the SHPDA of that determination. In such cases, the SHPDA shall not conduct a review of the proposed uses of Federal funds.

**402 PROPOSED USES OF ALLOTMENT FUNDS**

- 402.1 A proposal for using funds available from a state allotment which is subject to SHCC review shall be submitted to the SHPDA by the state program agency, or at the option of the state program agency, by the applicant according to procedures set forth by the state program agency.
- 402.2 The state program agency shall provide an opportunity for the SHPDA and SHCC to comment on its review procedures prior to their adoption.
- 402.3 The state program agency shall provide for a minimum of sixty (60) days for review of the proposed uses of allotment funds subject to review under §401.6, as required by §1513(e)(3) of Public Law 93-641, as amended.

**403 NONREVIEWABLE GRANT APPLICATIONS**

- 403.1 Except as provided in §404, the SHCC and SHPDA shall not review, comment upon, approve, or disapprove proposed uses of federal funds which are either of the following:
- (a) Noncompeting extension grant applications; or
  - (b) Supplemental grant applications that are for administrative increases in costs.
- 403.2 The SHPDA shall not review and approve or disapprove the proposed uses of federal funds appropriated for grants or contracts for research or training, as determined by the federal funding agency.

#### **404 REVIEW OF NONCOMPETING CONTINUATION APPLICATIONS**

- 404.1 Each applicant shall provide SHPDA with a copy of each application for a noncompeting continuation grant at the time the application is submitted to the federal funding agency or the Regional A-95 Clearinghouse, whichever is the earliest submission date.
- 404.2 The SHPDA shall review and approve or disapprove an application for a noncompeting continuation grant in the following circumstances:
- (a) Upon its own initiative, if the SHPDA has notified the federal funding agency of its intent to conduct the review at least nine (9) months prior to the date of a continuation grant award;
  - (b) When the applicant proposes a change in the funding level of twenty percent (20%) or more from that previously approved by the federal funding agency;
  - (c) When the applicant or the federal funding agency determines that there has been a substantial change in the proposed or actual use of funds; or
  - (d) If no other review is made under this subsection, every five (5) years, beginning November 8, 1979.

#### **405 CONFIDENTIAL MATERIAL**

- 405.1 In accordance with 42 CFR 122.408(b)(3), if an application contains material which the applicant believes to be confidential or proprietary (and which, therefore, should not become public), the applicant may submit a summary of this material to the federal funding agency.
- 405.2 Upon determination by the federal funding agency that the material is confidential or proprietary and the summary is full and accurate, the SHPDA shall accept the summary with the other portions of the application, and shall omit any requirement for that portion of the application that has been summarized.

#### **406 SHPDA REVIEW PROCEDURES AND CRITERIA**

- 406.1 The performance of any review by the SHPDA and SHCC shall be in accordance with and consistent with review procedures set forth in this chapter.
- 406.2 Before adopting or revising the review procedures and criteria, the SHPDA shall conduct a public hearing and establish a thirty (30) day public comment period to give interested persons an opportunity to offer written and or oral comments on materials it proposes to adopt.

#### **406 SHPDA REVIEW PROCEDURES AND CRITERIA (Continued)**

- 406.3 The SHPDA shall publish in the D.C. Register, and in one (1) or more newspapers of general circulation in the District, a notice stating that review procedures and criteria, or revisions, have been proposed for adoption and are available at a specified address for inspection and copying. The notice shall include detailed information about the public hearing and the public comment period.
- 406.4 The SHPDA shall distribute copies of the proposed review procedures and criteria, or revisions, to the Secretary of DHHS and to entities with which the SHPDA is required to coordinate its activities under §1513(d) of Public Law 93-641, as amended, including the following:
- (a) Any agency which establishes rates for health care facilities or health maintenance organizations (HMOs) in the District;
  - (b) The clearinghouse established under Office of Management and Budget Circular A-95;
  - (c) The Statewide Health Coordinating Council;
  - (d) The Professional Standards Review Organization; and
  - (e) The health systems agencies, SHPDAs, and Statewide Health Coordinating Councils designated for the areas contiguous to the District.
- 406.5 The SHPDA shall not impose fees for distributing the proposed review procedures and criteria, or proposed revisions, to the agencies and organizations specified in §406.4.
- 406.6 The SHPDA shall distribute copies of the adopted review procedures and criteria, and any revisions, upon request.

#### **407 GENERAL REVIEW CRITERIA**

- 407.1 Review criteria shall be established by the SHPDA within the guidelines established under Public Law 93-641, as amended.
- 407.2 The criteria may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.



**407 GENERAL REVIEW CRITERIA (Continued)**

407.3 The following minimum criteria shall be used in conducting reviews:

- (a) The relationship of the health services being reviewed to the District's State Health Plan (SHP) and Annual Implementation Plan (AIP) and any special plans which may be approved by the SHCC;
- (b) The relationship of the health services being reviewed to the long-range development plan of the provider proposing the services;
- (c) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups are likely to have access to those services;
- (d) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service; the extent to which that need will be met by the proposed relocation or by alternative arrangements; and the effect of the reduction, elimination, or relocation of the service on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups to obtain needed health care;
- (e) The availability of alternative, less costly, and more effective methods of providing services;
- (f) The immediate and long-term financial feasibility of the proposal and the probable impact of the proposal on the costs of and charges for providing health services in the District;
- (g) The relationship of the services proposed to be provided to the District's existing (and proposed) health care system;
- (h) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of other health services;
- (i) The relationship, including the organizational relationship, of the health services proposed to be provided, to ancillary or support services in the District;
- (j) The special needs and circumstances of those entities that provide a substantial portion of their services or resources, or both, to individuals not residing in the District or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics, and specialty centers;

**407 GENERAL REVIEW CRITERIA (Continued)**

**407.3 (Continued)**

- (k) The special needs and circumstances of health maintenance organizations (HMOs) for which assistance may be provided under Title XIII of the Public Health Services Act. These needs and circumstances shall be limited to the following:
  - (1) The needs of enrolled members and reasonable anticipated new members of the HMO or proposed HMO for the health services proposed to be provided by the organization; and
  - (2) The availability of the health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO or proposed HMO.
- (l) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;
- (m) The contribution of the project in meeting the health related needs of members of medically underserved groups and members of groups which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the District's SHP and API as deserving a priority; and
- (n) The special circumstances of health care institutions with respect to the need for conserving energy.

**407.4** In assessing the availability of the health services from non-HMO providers or other HMOs under §407.3(k)(2), the SHPDA and SHCC shall consider only whether the health services from these providers would meet the following availability criteria:

- (a) Availability under a contract of at least five (5) years duration;
- (b) Availability and convenient accessibility through physicians, other professionals associated with the HMO, or other proposed HMO;
- (c) Availability at a cost that will be no more than if the health service were provided by the HMO or the proposed HMO; and
- (d) Availability in a manner that is administratively feasible to the HMO or proposed HMO.



**407 GENERAL REVIEW CRITERIA (Continued)**

- 407.5 In the case of a construction project, the following minimum criteria shall be used in conducting reviews:
- (a) The costs and methods of the proposed construction, including the costs and methods of energy conservation;
  - (b) The probable impact of the construction project under review on the costs of providing health services by the applicant; and
  - (c) The relationship of the construction project to the SHPDA's evaluation of the condition of health care facilities required by §1523(a)(7) of Public Law 93-641, as amended.

**408 GENERAL REVIEW PROCESS**

- 408.1 The District SHPDA or SHCC review process shall be an open process that is structured in a manner that ensures that each application reviewed by the state agency is conducted in a timely and equitable fashion.
- 408.2 All interested parties shall have access to the process and an opportunity to provide information either in writing to the SHPDA or by presenting comments to the appropriate committee of the SHCC.
- 408.3 Information may be obtained on the status of any application through a written request, telephone request, or by a personal visit to the agency.
- 408.4 The SHPDA shall make each application available to the general public, along with staff analyses of reviews by the SHCC, and all other written materials pertinent to reviews of proposed uses of federal funds. In making these materials available to the public, the SHPDA shall adhere to the provisions of Public Law 93-641, as amended, the D.C. Freedom of Information Act, and related procedures and guidelines.
- 408.5 Persons requesting review information may be required to pay the reproduction costs incurred by the SHPDA. Reproduction costs shall be consistent with the fee schedule(s) established by the D.C. Freedom of Information Act.

**409 RESERVED**



#### **410 TECHNICAL ASSISTANCE AND SITE VISITATION**

- 410.1 Upon request, the SHPDA staff shall provide technical assistance to applicants relative to the development of grant applications. A pre-application conference shall allow the SHPDA staff to assist the applicant in developing applications which meet federal guidelines, community needs established review criteria, and the state health plan.
- 410.2 The SHPDA evaluation staff and SHCC members may make periodic scheduled visits to health facilities operating programs whose funds are subject to review. Requests for visits shall be made in writing to program heads.
- 410.3 Each request for a visit shall contain a list of the visitors, the purpose of the visit, and specific areas of concern.
- 410.4 Information obtained through site visitations may be used in reviews, and shall become a part of the official agency record.

#### **411 INTERAGENCY REVIEW COORDINATION**

- 411.1 In accordance with 42 CFR 122.405, when the proposed uses of federal funds would involve the development, expansion, or support of health resources in the District and another health service area in the Washington Metropolitan area, if the grant is to be administered from the District, the SHPDA shall coordinate the reviews by all of the health systems agencies involved, except as provided in §411.2.
- 411.2 With the agreement of the delegated agency, SHPDA may delegate coordinating responsibility to the agency in whose health service area a major portion of the funds shall be used, or the SHPDA may be delegated the review authority by the other agencies involved.
- 411.3 If some of the agencies involved approve the proposed use and some disapprove, the decision of each health systems agency shall apply to the use of funds in its respective health service area, as specified in 42 CFR 122.405.
- 411.4 The SHPDA is responsible for reviewing proposed uses of federal funds to the large number of national organizations headquartered within the District, even if the funds are to be used elsewhere, if the grants are to be administered in the District. Where a proposed use of federal funds involves the development, expansion, or support of health resources in areas outside the Washington D.C. area, contact shall be made with the appropriate health systems agency or state health planning and development agency for the delegation of the coordination of the review to the appropriate agency, in accordance with 42 CFR 122.405.

## **412 CONFLICT OF INTEREST BY SHCC MEMBERS**

- 412.1 No member of the reviewing committee or the SHCC shall vote on any proposed use of federal funds if he or she has (or has had within the prior twelve (12) months) a substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship with any entity or individual involved in any review matter before those groups.
- 412.2 A member with a conflict of interest shall make a written disclosure of his or her interest in any matter, and shall also make the relationship public in the meeting in which the action is to be taken.
- 412.3 Members who declare a conflict of interest may participate in discussions, but shall not vote on the matter requiring action. The written record shall reflect an abstention for members declaring a conflict of interest.

## **413 LETTERS OF INTENT**

- 413.1 Prior to submission of a formal application for a proposed use of federal funds, the applicant shall submit to the SHPDA a letter of intent to apply for federal assistance.
- 413.2 A letter of intent shall include at least the following basic information:
  - (a) A brief description of the project;
  - (b) The location of the project;
  - (c) The target population to be served;
  - (d) The estimated total cost of the project and the amount of federal funds proposed to be requested;
  - (e) The federal funding agency and legislative authority for the grant;
  - (f) The applicant's contact person; and
  - (g) The projected implementation date and project duration.
- 413.3 The letter of intent shall be submitted to the SHPDA at least sixty (60) days prior to the intended date of the submission of the application for review.



#### **413      LETTERS OF INTENT      (Continued)**

- 413.4      If the nature of a special project, a short-term notification of available funds from the funding agency, or related circumstances preclude an applicant from adhering to the sixty (60) day time frame established for submission of letters of intent under §413.3, the SHPDA may waive the letter of intent requirement.
- 413.5      In situations where an applicant does not have sufficient opportunity to inform SHPDA of its intent to apply for federal assistance because of circumstances beyond its control, the applicant shall advise SHPDA as soon as possible after the first oral or written notification of the availability of funds, but in no case more than seven (7) calendar days after written notification from the funding agency regarding the availability of funds. The applicant shall immediately ask the funding agency whether the review is required under the Proposed Uses of Federal Funds review authority.

#### **414      SUBMISSION OF APPLICATIONS FOR REVIEW**

- 414.1      Application forms and instructions or guidelines respecting the preparation of a grant application, contract, and related matters shall be available through the appropriate federal or state funding agency. It shall be the responsibility of prospective applicants to obtain an application kit from the appropriate funding agency or grant program.
- 414.2      Each application kit shall include the necessary forms and instructions for completing the grant application.
- 414.3      In the case of direct federal grants, contracts, loans, and loan guarantees, an application for a grant, loan, or loan guarantee or proposal for a contract subject to review by SHPDA or SHCC shall be submitted simultaneously to the SHPDA and the federal funding agency.
- 414.4      In the case of funds made available by the District government under an allotment program subject to review, the state program agency may establish the submission date.
- 414.5      In accordance with 42 CFR 122.408(b), the Secretary of DHHS may, for certain federal funding programs or types of applications, require that applications meet the following requirements:
- (a) Be submitted first to the SHPDA and then (following approval, disapproval, or the expiration of the review period, whichever comes first) to the Federal funding agency; or
  - (b) Directly to the federal funding agency, which shall, before approving the application or proposal and at a time it considers appropriate, submit it or a summary to the SHPDA.

#### **414 SUBMISSION OF APPLICATIONS FOR REVIEW (Continued)**

- 414.6 In the situations described in §414.5, the SHPDA shall accept the application for review at the time specified by the Secretary of DHHS. Other provisions of the regular review process, including the letter of intent requirement, shall not be modified by the change in application submission date in these situations.
- 414.7 All applicants shall submit five (5) copies of completed applications and any additional supportive materials to the SHPDA. An applicant shall be responsible for verifying the receipt of the application by the SHPDA.
- 414.8 Persons proposing projects for which a certificate of need is required shall submit a letter of intent to the SHPDA at least sixty (60) days prior to submission of their application for review.
- 414.9 Consistent with provisions of the D.C. Certificate of Need Act of 1980 and applicable rules, the letter required by §414.8 shall contain, in sufficient detail, information that adequately informs the SHPDA of the scope and nature of the project.

#### **415 REQUESTS FOR ADDITIONAL INFORMATION**

- 415.1 Upon the SHPDA's receipt of an application, a preliminary review shall be made to determine whether additional information is needed to conduct a complete and reasonable review.
- 415.2 SHPDA shall, whenever possible, rely on the application submitted to the federal funding agency for all information necessary to judge an application in relation to the general review criteria specified in §407 and any specific review criteria which may be adopted. However, because of the varying nature of the information requested by federal funding agencies, it may be necessary for the SHDPA to request additional information concerning the criteria directly from the applicant.
- 415.3 The SHPDA may also request additional information to clarify unclear or incomplete information contained in the application.
- 415.4 In the case of competing applications, SHPDA shall attempt to have comparable information from all applicants.
- 415.5 If additional information is desired, the information necessary shall be specified in a letter within fifteen (15) days of the receipt of the application. The requested information shall be submitted to the SHPDA in the form and manner prescribed and published by the SHPDA. Unless otherwise prescribed and published, the information shall be submitted in letter form. No SHPDA application forms shall be required.



**415 REQUESTS FOR ADDITIONAL INFORMATION (Continued)**

- 415.6 Applicants shall reply to the request for additional information within fifteen (15) days from the receipt of the letter.
- 415.7 Requests for additional information shall not extend the review period specified in §418.
- 415.8 Failure to comply with requests for additional information or established time frames specified in §§415.1 and 415.2 may result in an incomplete review and possible subsequent disapproval of an application.

**416 NOTICE OF REVIEW TO AFFECTED PERSONS**

- 416.1 Direct written notification to affected persons shall be provided within seven (7) days of the receipt of the grant application and shall include notification of the proposed schedule for the review and the period in which a public hearing during the course of the review may be requested. The manner of giving notice of any public hearing that may be held shall be included in this notice.
- 416.2 The SHPDA shall provide written notification to the federal funding agency at the same time notice is given under §416.1.
- 416.3 Written notification to the public and those members to be served by the proposed project shall be provided through two (2) newspapers of general circulation. All other affected persons shall be notified by mail.

**417 PUBLIC HEARINGS**

- 417.1 If requested by one (1) or more persons directly affected by the review, the SHPDA or SHCC shall conduct a public hearing in the course of the review.
- 417.2 A request for a public hearing shall be made in writing and received by the SHPDA within five (5) calendar days after notification of the start of the review period.
- 417.3 No fees shall be imposed for holding a public hearing.
- 417.4 For purposes of this section, the definition of the phrase "persons directly affected by the review" shall be the same as the definition used in applicable federal regulations.

**417 PUBLIC HEARINGS (Continued)**

- 417.5 The SHPDA may elect to convene a public hearing on its own initiative during the review period to offer an opportunity for any person to provide information, opinion, or testimony. However, it shall not hold a separate hearing if an affected person makes a request on the same application. One (1) hearing shall suffice as long as proper notification is given in accordance with procedures set forth in this chapter and all persons have an opportunity to present testimony at the hearing.
- 417.6 Notification to affected persons shall be made through written notice. Notification to the general public shall be placed in two (2) newspapers of general circulation.
- 417.7 Persons interested in presenting testimony shall notify the SHPDA in writing at least two (2) days prior to the scheduled hearing to register for the presentation of oral or written testimony. However, any person shall be allowed the opportunity to present testimony, regardless of pre-registration.
- 417.8 Written testimony and comments shall be received by SHPDA not later than the close of the hearing or by a later time established by the hearing officer.
- 417.9 All comments and testimony presented at the public hearing shall become a part of the general record and shall be made available to the public for inspection and copying upon request.

**418 PERIOD OF REVIEW**

- 418.1 The period for SHPDA or SHCC review shall begin no more than seven (7) days after the receipt of the application to the SHPDA.
- 418.2 The SHPDA or the SHCC shall be allowed up to sixty (60) days to conduct a review of grant applications and categorical state plans unless the appropriate federal funding agency or state program agency specifies in writing a longer period with respect to a program or particular proposed use of federal funds.

**419 ANALYSIS OF GRANT APPLICATIONS**

- 419.1 Upon receipt of a grant application, followed by the necessary notifications to affected persons, the SHPDA staff shall prepare a summary and analysis of the application for consideration by the appropriate SHCC committee. A copy of the staff analysis shall be sent to the applicant. It shall also be sent to other persons and appropriate entities for general information upon request.



## **419 ANALYSIS OF GRANT APPLICATIONS (Continued)**

- 419.2 Applicants shall be expected to attend the SHCC committee meeting at which their applications are to be considered to answer questions concerning their applications.
- 419.3 Applicants may be requested to attend review committee meetings through their letter of notification as an affected person, or by telephone, which shall be followed by a letter.

## **420 NOTIFICATION OF REVIEW DECISIONS**

- 420.1 Not later than the close of the first business day following the end of the sixty (60) day review period, the SHPDA shall provide written notification of its or the SHCC's decision to the applicant, the appropriate federal funding agency, or the state program agency (as appropriate).
- 420.2 Each decision shall be for approval or disapproval. Conditional decisions shall not be made.
- 420.3 Notification shall include written findings that state the basis for the final decision or recommendations of the SHCC or SHPDA.
- 420.4 All affected persons shall also be notified of the decision.
- 420.5 The SHCC shall be notified of all SHPDA decisions.

## **421 CONSEQUENCES OF REVIEW DECISIONS**

- 421.1 SHCC or SHPDA approval shall not guarantee funding of an application, although under 42 CFR 122.415 no award of federal funds subject to review and approval shall be made unless one (1) of the following has occurred:
- (a) The SHCC or SHPDA has approved the proposed use;
  - (b) The SHCC or SHPDA has failed to approve or disapprove a proposal after having been provided at least sixty (60) days in which to review and approve or disapprove the proposed use;
  - (c) In the case of funds made available in a contract, grant, or allotment to the District government, the Secretary of DHHS has overridden an SHCC or SHPDA disapproval in accordance with 42 CFR 122.415; or
  - (d) In the case of funds made available in a contract, grant, or allotment to the District government, the Mayor has overridden the SHPDA or SHCC disapproval in accordance with §1513(e)(3) of Public Law 93-641, as amended.

**421 CONSEQUENCES OF REVIEW DECISIONS (Continued)**

- 421.2 In accordance with 42 CFR 122.415, if the SHPDA disapproves a proposed use of federal funds under one (1) of the four (4) Acts specified in §401.2, the Secretary of DHHS shall not make funds available unless the applicant requests the Secretary to review the disapproval decision, accompanied by a justification for approval by the Secretary of the proposed use of federal funds despite the SHCC disapproval, and the Secretary determines that the funds should be made available notwithstanding the SHPDA disapproval.
- 421.3 As specified in 42 CFR 122.415(b)(1) and (b)(2), to be effective a request for the Secretary's review shall be delivered or mailed to the appropriate federal funding agency not later than fifteen (15) days after the SHPDA provides notification to the applicant of the disapproval decision. This request shall be accompanied by a justification for approval by the Secretary of the proposed use of federal funds despite SHPDA disapproval, including detailed responses to the reasons given by the SHPDA for its disapproval.
- 421.4 In accordance with 42 CFR 122.415(c)(1), within three (3) working days of the receipt by DHHS of an applicant's request for the reconsideration of the SHPDA disapproval, the SHPDA shall be notified of the request and shall be asked to submit its comments within fifteen (15) calendar days from the delivery date (or the postmark date, if mailed) of the notification. The review official shall forward copies of the SHPDA notification to the applicant.
- 421.5 In accordance with 42 CFR 122.415(d)(1), in determining whether to make funds available notwithstanding the SHPDA disapproval, the federal review official shall consider any comments received from the SHPDA, the appropriate federal bureau or institute director, and the Regional Health Administrator. In addition, the following criteria shall be considered:
- (a) Whether the SHPDA substantially adhered to the applicable review procedures adopted by the Agency;
  - (b) Whether the proposed use of federal funds is consistent with the applicable review criteria used by the SHPDA;
  - (c) Whether the failure to make the proposed federal funds available will adversely affect the health of the residents who are to receive the services; and
  - (d) Whether the proposed uses of federal funds meet a national or regional need for which local conditions offer special advantages, and which is unlikely to be accomplished efficiently and effectively in another health service area.



## **422 OTHER REVIEWS**

- 422.1 SHPDA review procedures shall not preclude the need for review of applications under OMB Circular A-95 by the appropriate agencies.
- 422.2 The applicant shall notify the appropriate A-95 clearinghouse (state or local, as required) of its intent to apply for federal assistance.
- 422.3 All state plans and applications for federal support initiated by entities of the District government shall contain evidence that the proposals have been reviewed and approved by the Office of Budget and Resource Development prior to submission to the SHPDA.
- 422.4 A separate application for Certificate of Need shall be filed with the D.C. SHPDA if a new service will be delivered or if a capital expenditure of one hundred fifty thousand dollars (\$150,000) or more or in certain other cases, as specified in the D.C. Certificate of need Act of 1980. Both the application for the grant award and Certificate of Need shall be deemed equally important and involve a separate review process.
- 422.5 To the extent to which it is legally and otherwise possible to do so, the SHPDA and the appropriate SHCC committee(s) shall conduct a joint review of any proposal which is subject to both the Certificate of Need and proposed use of federal funds review.

## **423 PERIODIC REPORTS FROM PROVIDERS OF HEALTH SERVICES**

- 423.1 Providers of health services and other persons subject to SHPDA or SHCC review shall submit periodic reports to the state agency with respect to the development of proposals.
- 423.2 Applicants whose grant requests have been funded shall submit to the SHPDA copies of those periodic reports that are required by the funding agency through established reporting procedures.
- 423.3 The SHPDA may request additional reports from a provider of health services; Provided, that in each case the provider shall be given fifteen (15) days written notification that contains reasons for the special request.

## **424 PUBLICATION OF ANNUAL STATUS REPORT**

- 424.1 The SHPDA shall prepare and publish an annual report of the Agency reviews conducted.
- 424.2 The annual report shall include a statement concerning the status of each review, a general statement of the findings and decisions made in the course of the reviews, and a list of the reviews completed by the SHPDA since the publication of the last report.

## 499 DEFINITIONS

499.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Affected persons** - includes, at a minimum, the following:

- (a) The person (referred to as the "applicant") whose application for a proposed use of federal funds (referred to as the "project") is being reviewed;
- (b) All other health systems agencies serving health service areas whose residents are proposed to be served by the project;
- (c) The SHPDA and the state program agency for each state in which the project is proposed to be conducted;
- (d) Entities located in the District that provide services or conduct activities similar to the proposed services or activities under review or which, prior to the receipt by the SHPDA of the application for review, have formally indicated an intention to provide similar services or conduct similar activities in the future;
- (e) Entities with which the SHPDA must coordinate its activities under §1513(d) of Public Law 93-641, as amended, including clearinghouses established under the Office of Management and Budget Circular A-95;
- (f) Any agency that establishes rates for health care facilities or health maintenance organizations (HMOs) in the District; and
- (g) Those members of the public who are to be served by the proposed project.

**Applicant** - a person or agency applying to a federal funding agency for a grant, loan, or loan guarantee, or submitting to a federal funding agency a proposal for a contract, or in the case of funds made available by a state from an allotment to the state, a person or agency applying to a state program agency for a grant or contract reviewable under federal guidelines.

**Construction** - includes the following:

- (a) The construction of new buildings and the acquisition, expansion, remodeling, replacement, and alteration of existing buildings; and
- (b) Equipping new buildings and existing buildings, whether or not expanded, remodeled, or altered.

**Certificate of Need** - a certificate issued by the SHPDA under the D.C. Certificate of Need Act of 1980 to an individual or organization proposing to construct or modify a health facility, or offer a new or different health service. Where a Certificate is required (for instance for most proposals which will involve more than a minimum capital investment of one hundred fifty thousand dollars (\$150,000) or initiation of new health services), it is a condition of licensure of the facility or service.



**Development of health resources** - activities which directly result in the generation of new health resources or the improvement, including consolidation, of existing health resources. It includes, but is not limited to, education and training of health professions personnel, the development of facilities or services, and arrangements to provide services.

**Expansion of health resources** - any activity which will result in a substantial and significant increase in the quantity of health resources.

**Federal funding agency** - the organizational component of the U.S. Department of Health and Human Services which has the authority to make a grant, contract, loan, or loan guarantee reviewable under Public Law 93-641, as amended, and 42 CFR 122.401 through 415, which govern the review of proposed uses of federal funds.

**Health resources** - includes health services, health professions personnel, and health care facilities. Specifically the term includes the following:

- (a) **Health services** - screening, prevention, diagnostic, treatment, habilitative, or rehabilitative services; including alcohol abuse, drug abuse, mental health, preventive and environmental health services, and health information, education, and promotion;
- (b) **Health professions personnel** - individuals whose main occupation is the delivery of health services; and
- (c) **Health care facilities** - general hospitals, psychiatric hospitals, other specialty hospitals, skilled nursing facilities, kidney disease treatment centers (including a free-standing hemodialysis units), intermediate care facilities, ambulatory surgical treatment facilities, and diagnostic health care facilities; but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, or those private office facilities for the private practice of a physician, dentist, or other health care professional, except as specified in the D.C. Certificate of Need Act of 1980.

**Person** - an individual, trust or estate, partnership, corporation (including associations, joint stock companies, and insurance companies), or the District government or a political subdivision or instrumentality of the District government.

**State program agency** - the agency of the District government submitting a state plan or grant application to the Secretary of DHHS as a condition to the receipt by any person of any funds under allotments made to states reviewable under Public Law 93-641, as amended, and 42 CFR parts 122.401 through 415, which govern the review of proposed uses of federal funds.

**Support of health resources** - the furnishing of resources needed to provide a health resource, including money, manpower, equipment, facilities, supplies, or consultative services.

